

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

United States Courts
Southern District of Texas
ENTERED
APR 06 2005
Michael N. Milby, Clerk of Court

JAMES CHARLES SMITH,

Plaintiff,

vs.

DOUG DRETKE,

Defendant.

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Civil Action H-05-0219

MEMORANDUM AND RECOMMENDATION

James Charles Smith, who also refers to himself as the Reverend Evangelist Smith James, is an inmate in the custody of the Texas Department of Criminal Justice. His inmate number is 881812. He has filed at least a dozen handwritten motions with the Southern District of Texas in the last several months. Although the motions presently referred to this court were docketed as a habeas corpus petition, Smith is seeking damages; in particular, some four billion dollars in compensation for what he refers to as a counterfeiting bail bond scheme. Thus, Smith's filings are best construed as a civil rights complaint under 42 U.S.C. § 1983, alleging that numerous government officials have deprived him of his rights while acting under the color of state law.

Smith raised identical claims before U.S. District Judge Nancy Atlas in November of 2004. There is little need to expand on that court's findings that "the incoherent, rambling allegations contained in Smith's pleadings are irrational, wholly incredible, and therefore frivolous." *Smith v. State of Texas* (S.D. Tex. 2004) (H-04-cv-4504, Dkt. 4). The court dismissed Smith's case with prejudice pursuant to the Prison Litigation Reform Act, which authorizes the dismissal of an *in forma pauperis* case at any time the court determines that the action "is frivolous or malicious." 28 U.S.C. § 1915(e)(2)(B); *see also Geiger v. Jowers*, — F.3d —, 2005 WL 639623, at *1 (5th Cir.

2005) (“A district court may dismiss as frivolous the complaint of a prisoner proceeding [as a pauper] if it lacks an arguable basis in law or fact”).

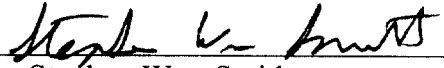
At this point, Smith’s filings are not only frivolous, they are also duplicative. Smith’s claims have been raised and properly rejected. For this reason, Smith’s case should again be dismissed with prejudice.

Moreover, Smith has neither paid the required filing fee or applied to proceed as a pauper, even though Smith certainly has notice of this requirement from his prior litigation. He has been ordered to pay the \$150.00 filing fee for his original complaint, as well as the \$255.00 fee for his appeal of the decision, unless he applies to proceed as a pauper. Likewise, Smith’s inmate trust account with the Texas Department of Criminal Justice should be docketed another \$150.00 for filing fees¹ pursuant to the Prison Litigation Reform Act for this action. Under the Act, “if a prisoner brings a civil action or files an appeal in forma pauperis, the prisoner shall be required to pay the full amount of a filing fee.” 28 U.S.C. § 1915(b)(1). The fee provisions of the Act were designed to deter frivolous prisoner litigation by making all prisoners seeking to bring lawsuits liable for filing fees. *Williams v. Roberts*, 116 F.3d 1126, 1127-28 (5th Cir. 1997). Accordingly, a copy of the court’s order should be sent to the Texas Department of Criminal Justice, Office of the General Counsel, P.O. Box 13084, Austin, Texas, 78711, and to the Inmate Trust Fund, P.O. Box 629, Huntsville, Texas, 77342-0629.

Finally, Smith is advised that if he files a third frivolous action, he may lose his right to file actions as a pauper altogether. *See* 28 U.S.C. § 1915(g).

¹ The original of Smith’s motions referred to this court were filed shortly before the new filing fee of \$250.00 for civil actions went into effect January 19, 2005.

Signed on April 6, 2005, at Houston, Texas.

A handwritten signature in black ink, appearing to read "Stephen Wm. Smith", written over a horizontal line.

Stephen Wm. Smith
United States Magistrate Judge